

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

VS.

GENESIS COMPUTER SYSTEMS,
INC., a California corporation, and
SHAFAYAT DEWAN, an individual,

Defendants.

Case No. 8:17-cv-01416-CJC-KES

STIPULATED PROTECTIVE ORDER

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be
5 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter
6 the following Stipulated Protective Order. The parties acknowledge that this Order
7 does not confer blanket protections on all disclosures or responses to discovery and
8 that the protection it affords from public disclosure and use extends only to the
9 limited information or items that are entitled to confidential treatment under the
10 applicable legal principles. The parties further acknowledge, as set forth in Section
11 12.3, below, that this Stipulated Protective Order does not entitle them to file
12 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
13 that must be followed and the standards that will be applied when a party seeks
14 permission from the court to file material under seal.

15 B. GOOD CAUSE STATEMENT

16 This action is likely to involve trade secrets, confidential customer information
17 (including personally identifiable information), and other valuable research,
18 investigatory, development, commercial, financial, technical and/or proprietary
19 information for which special protection from public disclosure and from use for any
20 purpose other than prosecution of this action is warranted. Such confidential and
21 proprietary materials and information consist of, among other things, confidential
22 business or financial information, information regarding confidential business
23 practices, or other confidential research, development, or commercial information
24 (including information implicating privacy rights of third parties), information
25 otherwise generally unavailable to the public, or which may be privileged or
26 otherwise protected from disclosure under state or federal statutes, court rules, case
27 decisions, or common law. Accordingly, to expedite the flow of information, to

1 facilitate the prompt resolution of disputes over confidentiality of discovery
2 materials, to adequately protect information the parties are entitled to keep
3 confidential, to ensure that the parties are permitted reasonable necessary uses of
4 such material in preparation for and in the conduct of trial, to address their handling
5 at the end of the litigation, and serve the ends of justice, a protective order for such
6 information is justified in this matter. It is the intent of the parties that information
7 will not be designated as confidential for tactical reasons and that nothing be so
8 designated without a good faith belief that it has been maintained in a confidential,
9 non-public manner, and there is good cause why it should not be part of the public
10 record of this case.

11 2. DEFINITIONS

12 2.1. Action: this pending federal law suit.

13 2.2. Challenging Party: a Party or Non-Party that challenges the designation
14 of information or items under this Order.

15 2.3. “CONFIDENTIAL” Information or Items: information (regardless of
16 how it is generated, stored or maintained) or tangible things that qualify for
17 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the
18 Good Cause Statement.

19 2.4. Counsel: Outside Counsel of Record and House Counsel (as well as
20 their support staff).

21 2.5. Designating Party: a Party or Non-Party that designates information or
22 items that it produces in disclosures or in responses to discovery as
23 “CONFIDENTIAL.”

24 2.6. Disclosure or Discovery Material: all items or information, regardless
25 of the medium or manner in which it is generated, stored, or maintained (including,
26 among other things, testimony, transcripts, and tangible things), that are produced or
27 generated in disclosures or responses to discovery in this matter.

1 2.7. Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as
3 an expert witness or as a consultant in this Action.

4 2.8. House Counsel: attorneys who are employees of a party to this Action.
5 House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

7 2.9. Non-Party: any natural person, partnership, corporation, association, or
8 other legal entity not named as a Party to this action.

9 2.10. Outside Counsel of Record: attorneys who are not employees of a party
10 to this Action but are retained to represent or advise a party to this Action and have
11 appeared in this Action on behalf of that party or are affiliated with a law firm which
12 has appeared on behalf of that party, and includes support staff as well as any
13 employee of any non-party insurance carrier that is providing coverage in connection
14 with this Action to whom it is reasonably necessary to disclose or allow access to the
15 information for this Action.

16 2.11. Party: any party to this Action, including all of its officers, directors,
17 employees, consultants, retained experts, and Outside Counsel of Record (and their
18 support staffs).

19 2.12. Producing Party: a Party or Non-Party that produces Disclosure or
20 Discovery Material in this Action.

21 2.13. Professional Vendors: persons or entities that provide litigation support
22 services (e.g., photocopying, videotaping, translating, preparing exhibits or
23 demonstrations, and organizing, storing, or retrieving data in any form or medium)
24 and their employees and subcontractors.

25 2.14. Protected Material: any Disclosure or Discovery Material that is
26 designated as “CONFIDENTIAL.”

1 2.15. Receiving Party: a Party that receives Disclosure or Discovery Material
2 from a Producing Party.

3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only
5 Protected Material (as defined above), but also (1) any information copied or
6 extracted from Protected Material; (2) all copies, excerpts, summaries, or
7 compilations of Protected Material; and (3) any testimony, conversations, or
8 presentations by Parties or their Counsel that might reveal Protected Material.

9 Any use of Protected Material at trial shall be governed by the orders of the
10 trial judge. This Order does not govern the use of Protected Material at trial.

11 4. DURATION

12 Even after final disposition of this litigation, the confidentiality obligations
13 imposed by this Order shall remain in effect until a Designating Party agrees
14 otherwise in writing or a court order otherwise directs. Final disposition shall be
15 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
16 or without prejudice; and (2) final judgment herein after the completion and
17 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
18 including the time limits for filing any motions or applications for extension of time
19 pursuant to applicable law.

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1. Exercise of Restraint and Care in Designating Material for Protection.
22 Each Party or Non-Party that designates information or items for protection under
23 this Order must take care to limit any such designation to specific material that
24 qualifies under the appropriate standards. The Designating Party must designate for
25 protection only those parts of material, documents, items, or oral or written
26 communications that qualify so that other portions of the material, documents, items,

1 or communications for which protection is not warranted are not swept unjustifiably
2 within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations
4 that are shown to be clearly unjustified or that have been made for an improper
5 purpose (e.g., to unnecessarily encumber the case development process or to impose
6 unnecessary expenses and burdens on other parties) may expose the Designating
7 Party to sanctions.

8 If it comes to a Designating Party's attention that information or items that it
9 designated for protection do not qualify for protection, that Designating Party must
10 promptly notify all other Parties that it is withdrawing the inapplicable designation.

11 **5.2. Manner and Timing of Designations.** Except as otherwise provided in
12 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
13 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
14 under this Order must be clearly so designated before the material is disclosed or
15 produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic
18 documents, but excluding transcripts of depositions or other pretrial or trial
19 proceedings), that the Producing Party affix at a minimum, the legend
20 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
21 contains protected material. If only a portion or portions of the material on a page
22 qualifies for protection, the Producing Party also must clearly identify the protected
23 portion(s) (e.g., by making appropriate markings in the margins).

24 A Party or Non-Party that makes original documents available for inspection
25 need not designate them for protection until after the inspecting Party has indicated
26 which documents it would like copied and produced. During the inspection and
27 before the designation, all of the material made available for inspection shall be
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deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in depositions that the Designating Party identify the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony, or within 30 days of the Designating Party's receipt of the transcript.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend "CONFIDENTIAL." If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

1 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1. **Timing of Challenges.** Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court's
4 Scheduling Order.

5 6.2. **Meet and Confer.** The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37.1 et seq.

7 6.3. The burden of persuasion in any such challenge proceeding shall be on
8 the Designating Party. Frivolous challenges, and those made for an improper
9 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
10 parties) may expose the Challenging Party to sanctions. Unless the Designating
11 Party has waived or withdrawn the confidentiality designation, all parties shall
12 continue to afford the material in question the level of protection to which it is
13 entitled under the Producing Party's designation until the Court rules on the
14 challenge.

15 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

16 7.1. **Basic Principles.** A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a Non-Party in connection with this
18 Action only for prosecuting, defending, or attempting to settle this Action. Such
19 Protected Material may be disclosed only to the categories of persons and under the
20 conditions described in this Order. When the Action has been terminated, a
21 Receiving Party must comply with the provisions of section 13 below (FINAL
22 DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a
24 location and in a secure manner that ensures that access is limited to the persons
25 authorized under this Order.

26 7.2. **Disclosure of "CONFIDENTIAL" Information or Items.** Unless
27 otherwise ordered by the court or permitted in writing by the Designating Party, a
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1 Receiving Party may disclose any information or item designated
2 “CONFIDENTIAL” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this Action,
4 as well as employees of said Outside Counsel of Record to whom it is reasonably
5 necessary to disclose the information for this Action;

6 (b) the officers, directors, and employees (including House Counsel)
7 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

8 (c) Experts (as defined in this Order) of the Receiving Party to whom
9 disclosure is reasonably necessary for this Action and who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (d) the court and its personnel;

12 (e) court reporters and their staff;

13 (f) professional jury or trial consultants, mock jurors, and

14 Professional Vendors to whom disclosure is reasonably necessary for this Action and
15 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (g) the author or recipient of a document containing the information
17 or a custodian or other person who otherwise possessed or knew the information;

18 (h) during their depositions, witnesses ,and attorneys for witnesses, in
19 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
20 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
21 they will not be permitted to keep any confidential information unless they sign the
22 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
23 agreed by the Designating Party or ordered by the court. Pages of transcribed
24 deposition testimony or exhibits to depositions that reveal Protected Material may be
25 separately bound by the court reporter and may not be disclosed to anyone except as
26 permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information

1 produced by Non-Parties in connection with this litigation is protected by the
2 remedies and relief provided by this Order. Nothing in these provisions should be
3 construed as prohibiting a Non-Party from seeking additional protections.

4 (b) In the event that a Party is required, by a valid discovery request,
5 to produce a Non-Party's confidential information in its possession, and the Party is
6 subject to an agreement with the Non-Party not to produce the Non-Party's
7 confidential information, then the Party shall:

8 (1) promptly notify in writing the Requesting Party and the
9 Non-Party that some or all of the information requested is subject to a confidentiality
10 agreement with a Non-Party;

11 (2) promptly provide the Non-Party with a copy of the
12 Stipulated Protective Order in this Action, the relevant discovery request(s), and a
13 reasonably specific description of the information requested; and

14 (3) make the information requested available for inspection by
15 the Non-Party, if requested.

16 (c) If the Non-Party fails to seek a protective order from this court
17 within 14 days of receiving the notice and accompanying information, the Receiving
18 Party may produce the Non-Party's confidential information responsive to the
19 discovery request. If the Non-Party timely seeks a protective order, the Receiving
20 Party shall not produce any information in its possession or control that is subject to
21 the confidentiality agreement with the Non-Party before a determination by the court.
22 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
23 of seeking protection in this court of its Protected Material.

24 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
26 Protected Material to any person or in any circumstance not authorized under this
27 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
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writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
PROTECTED MATERIAL**

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. **MISCELLANEOUS**

12.1. Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2. Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3. Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may

1 only be filed under seal pursuant to a court order authorizing the sealing of the
2 specific Protected Material at issue. If a Party's request to file Protected Material
3 under seal is denied by the court, then the Receiving Party may file the information
4 in the public record unless otherwise instructed by the court.

5 13. FINAL DISPOSITION

6 Within 60 days after the final disposition of this Action, as defined in
7 paragraph 4, each Receiving Party must return all Protected Material to the
8 Producing Party or destroy such material, at the Receiving Party's sole discretion.
9 As used in this subdivision, "all Protected Material" includes all copies, abstracts,
10 compilations, summaries, and any other format reproducing or capturing any of the
11 Protected Material. Whether the Protected Material is returned or destroyed, the
12 Receiving Party must submit a written certification to the Producing Party (and, if
13 not the same person or entity, to the Designating Party) by the 60 day deadline that
14 (1) identifies (by category, where appropriate) all the Protected Material that was
15 returned or destroyed and (2) affirms that the Receiving Party has not retained any
16 copies, abstracts, compilations, summaries or any other format reproducing or
17 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
18 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,
19 and hearing transcripts, legal memoranda, correspondence, deposition and trial
20 exhibits, expert reports, attorney work product, and consultant and expert work
21 product, even if such materials contain Protected Material. Any such archival copies
22 that contain or constitute Protected Material remain subject to this Protective Order
23 as set forth in Section 4 (DURATION).

24 Any violation of this Order may be punished by any and all appropriate
25 measures including, without limitation, contempt proceedings and/or monetary
26 sanctions.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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DATED: January 10, 2018

4 /s/ Bonnie E. MacNaughton

5 Attorneys for Plaintiff

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11
12 DATED: January 10, 2018

13
14 /s/ Kevin R. Lussier

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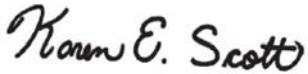
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21 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

22
23 DATED: 01/16/2018

24 

25
26 The Honorable Karen E. Scott
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Central District of California on
[date] in the case of *Microsoft Corporation v. Genesis Computer Systems, Inc. et al.*,
Case No. 8:17-cv-01416-CJC-KES. I agree to comply with and to be bound by all
the terms of this Stipulated Protective Order and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any information
or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name:

Signature: